

**Before the
Federal Communications Commission
Washington, DC 20554**

In the matter of:)	
)	
Digital Audio Broadcasting Systems)	
And Their Impact on the Terrestrial)	MM Docket No. 99-325
Radio Broadcast Service)	

Comments of Radio Kings Bay, Incorporated

The following comments are filed by Radio Kings Bay, Incorporated (“RKBI”) in response to the Commission’s Further Notice of Proposed Rulemaking and Notice of Inquiry (“Notice”) in the matter of Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service. Radio Kings Bay, Incorporated is the licensee of Radio Station WKBX-FM, Kingsland, Georgia, a locally owned and operated Class A FM radio station covering a non-metro population of approximately 45,000.

I. Comments on The Shift to Digital Audio Broadcasting

The Commission asks whether at this time the government, the marketplace, or both, should determine the speed of conversion from analog to hybrid, and eventually to digital radio service.¹ RKBI urges the Commission to allow the marketplace to be the sole determining factor by which digital audio broadcasting (“DAB”) technology is either accepted or rejected by either broadcasters or the public. Further, there is no compelling

¹ Notice at Page 8

reason why the Commission should advance either the transition to DAB by broadcast stations or consumer acceptance of DAB receivers. RKBI suggests that the Commission should confine itself to its authorized mission of establishing DAB technical standards and permissible transmissions and avoid that slippery slope as an autocratic regulatory agency making speculative decisions as to whether DAB is or is not in the best interests of all consumers and all broadcast stations. Both the public and broadcasters should be allowed to either validate or reject DAB without the government's well meaning but misplaced suggestion of potential intervention should conversion to DAB falter either within the consumer marketplace or with station conversions.

The Commission takes special note that it "does not want to disadvantage any member of the public by forcing the purchase of new radios,"² yet is inexplicably mute in showing the same concern for that segment of broadcast stations who might be disadvantaged should they be forced to purchase DAB technical equipment. The inescapable fact is that there is a substantial number of small and medium market station operators such as RKBI that neither have the abundant financial resources to expense the required capitalization costs for DAB conversion, nor foresee any reasonable hope of recovering such capitalization costs through other DAB revenue opportunities that may or may not exist within their market. Currently, these analog station operators serve their communities with a consistently high level of diversity in programming and public service commitment that the Commission repeatedly claims it wants to foster within the industry; yet Commission interference in DAB digital conversion would not only

² Notice at Page 8

circumvent the impartial free market approach to transmigration but would put these community radio stations at dire financial peril under the weighty guillotine of a forced conversion from their analog only life. Such actions, RKBI submits, portends just the opposite of the Commission's desired goal in this proceeding, namely a diminution of diversity and localism.

II. Comments on Conversion Policy

The Commission has stated in the Notice that it has not considered a date certain when radio stations should commence digital broadcast operations because stations would not be using additional spectrum to provide digital service; moreover that there is no immediate need to consider mandatory transition policies³. Potential proponents of swift DAB conversion, most notably iBiquity, its gaggle of influential broadcast group investors, and equipment manufacturers, each and collectively have an inherent vested financial interest in the rapid implementation of IBOC digital service. But while rapid adoption of DAB and its related return on investment is of pertinent concern to these parties, such private sector considerations should be of no moment to the Commission as it deliberates DAB conversion policy. There is absolutely no compelling governmental interest to either proactively aid or hinder the commercial deployment of this technology. Rather and as it did with conversion to its adopted color television standard in the dim distant past, the Commission should allow the free, unrestricted marketplace to determine the commercial acceptance of and conversion to digital audio broadcasting. In short, the Commission should not adopt any form of conversion and/or transition policies with

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respect to when radio stations should commence digital broadcast operations. The time line progress by which broadcasters may choose to embrace DAB technology should not be tampered with either legislatively or by Commission dictate.

III. Comment on High Definition Digital Audio Broadcasting

The Commission seeks comment on whether or not it should require broadcasters to provide a minimum amount of high definition audio⁴. It is the position of RKBI that there should be no attempt by the Commission to mandate any minimum high definition audio service requirement. At the outset, there appears to be absolutely no historical basis in past Commission actions that either speak to or lends support to the notion that a broadcast station should be forced to adopt a new technical standard at a minimum service level. With the adoption of FM stereo service, there was never a requirement upon radio stations to program a minimum level of stereo versus mono programming; with the adoption of television color standards there was never a requirement that television stations must program a minimum amount of color broadcasts; and when AM stereo rules were promulgated there was never a requirement that adapters must program a minimum amount of full separation stereocasts. In the instance situation with DAB, RKBI can find no apparent significant difference in circumstances and, to the detriment of broadcasters, any Commission attempt to adopt a minimum service requirement would simply adversely trump the traditional free marketplace adoption of a new technology.

IV. Comments on Patents

The Commission seeks comments on iBiquity's conduct with respect to imposing

⁴ Notice at Page 9

excessive licensing fees on broadcasters.⁵ Unfortunately, this begs the pivotal question of why broadcasters should have to pay any licensing fee to iBiquity whatsoever. Pure and simple it's double dipping -- one licensing fee extracted from manufacturers of DAB equipment and another fee extracted from the equipment end user who, by pending Commission action, would have no other choice but to use iBiquity patent technology if it wants to migrate its station operations to DAB. In its Reply Comments in MM Docket 99- 325, RKBI asserted the following:

“To further entangle and escalate these transition costs, now comes the destructive unfolding of iBiquity’s contrivance to charge stations an FM-IBOC license royalty fee. It is therefore imperative that the Commission force the issue on DAB system royalty fees **before** a single system DAB standard is adopted.”⁶

Regrettably, the Commission’s failure to decisively act in this regard early on in this proceeding has given the patent holder(s) the apparent unbridled consent to shake down broadcasters for start-up and other user fees as they see fit. In its initial roll out of DAB technology to stations iBiquity has been offering so-called “Early Adapter” license fees, a somewhat shallow offering given the fact that a vast majority these early adapter stations are owned by iBiquity stockholders. Nonetheless, RKBI suggests that iBiquity’s conduct during the interim period is not as consequential as the potential for abusive conduct once the instant proceeding ends. Left in the vague ether are potential iBiquity cash cows for an inevitable succession of firmware upgrades at what cost, technical support at what cost, and the most absurd of all,

⁵ Notice at Page 23

⁶Reply Comments of Radio Kings Bay, Inc., MM Docket No. 99-325 (20 March 2002)

extracting a percentage of revenues that a station earns from its digital audio or data services. The inescapable reality is that by virtue of single system DAB standard, any royalty fee agreement between iBiquity and a radio station becomes an inherent adhesion license, the terms of which are clearly and unmistakably one-sided. For its part, iBiquity has already professed that broadcasters will be charged a one-time start-up license fee of fifteen times the station's FCC annual regulatory fee.⁷ According to iBiquity, this fee is justified because "...the software license cost is equivalent to about 1/60th of a share point for a station."⁸ This is pure sophistry for most any station that operates in a non-rated market environment. Nonetheless, that is what iBiquity advances as fair, end of discussion. To sugar coat this disgraceful extortion payment iBiquity generously proposes that broadcasters will be able to pay out the license fee over ten years.⁹ The Commission should not buy into this benevolent sounding but thinly veiled smoke screen because the rock bottom reality is that iBiquity's license fee, as well as ancillary charges, will at best actually slow DAB deployment in non-metro market stations and at worst, presents legal anti-trust issues that beg for judicial review.

The monopolistic and anti-trust behavior at the hands of patent holders that RKBI speaks to herein should be resolved within the Commission's Final Report and Order in this proceeding. It would be a fatal error if the Commission chooses to rely exclusively on self serving, non-binding rhetoric by patent license holders to enter "...into licensing agreements under reasonable terms and conditions."¹⁰ If the iBiquity

⁷ See "Licensing Fees To Be Levied," Radio World magazine, 10 April 2002

⁸ *ibid.*

⁹ *ibid.*

fifteen times FCC regulatory fee formula sounds reasonable to the Commission eyes and ears, then RKBI would respectfully suggest that the Commission dip down into the real trenches within the heartland of the broadcast industry and peer into the financial books of WKBX-FM, and those of the thousands of similarly situated stations, who constantly has to struggle just to keep its financial head above water. By doing so, the Commission will see, perhaps for the first time, that the cumulative price tag for digital conversion is by no means a financial slam dunk for those practicing our trade in non-metro markets.

V. Conclusion

The Commission asks: "...what changes in our rules would likely encourage radio stations to convert to a hybrid or an all-digital format."¹¹ First and foremost, the Commission should constrain DAB patent holders from extorting license fees from broadcasters. This scam is the number one deterrent to broadcast operators such as RKBI to even consider converting to DAB. Secondly, the Commission should focus its regulatory energies on its statutory authority to codify and enforce DAB technical standards and permissible transmissions within the IBOC mode and leave the issue of DAB migration to the free marketplace where it properly should repose.

RKBI hypothesizes that joining this broadcast station owner is a vast majority of non-metro market Class A FM radio station operations, as well as LPFM licensees, who have little interest in DAB conversion now or in the immediate future. At this point in

¹⁰ Notice at Page 23

¹¹ Notice at Page 8

time under the current state of our industry, non metro market conversion to DAB makes no sense economically; no sense for potential added revenue streams; and no sense in terms of a significant or meaningful enhancement of either its coverage area or cumulative gains as a result of enhanced audio quality. If the Commission accepts this theory in whole or in part , then it flows that it certainly makes no sense to promulgate DAB policies that would cast these analog radio station operators into terminal financial disarray, especially when the current analog service and station programming is already meeting and exceeding the Commission's goal of operating in the public interest, convenience, and necessity. In the end, the driving force for terrestrial radio broadcasters is and always has been how it serves and programs to the needs of its local audience; the technical delivery mechanism is of secondary importance. So while the Commission may conclude that "...audio fidelity and robustness will greatly improve when radio stations move to digital operations,"¹² RKBI submits that the decision on when and how to make such a move should be exclusively conferred to the individual broadcaster. It is the local station operator who best has knowledge of the forces within their market that will dictate its ability to remain competitive from both a programming, technical, and financial perspective.

Respectfully submitted,

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¹² Notice at Page 5